

ANTHONY THEOPHILUS

IBLA 75-443

Decided August 11, 1975

Appeal from a decision of the Montana State Office, Bureau of Land Management, denying reinstatement of oil and gas lease M 27897-D, terminated by operation of law for failure to pay the annual advance rental on or prior to the anniversary date of the lease.

Affirmed.

1. Oil and Gas Leases: Reinstatement

The difficulties of a lessee in obtaining sufficient money to pay an oil and gas lease's advance rental is not a "justifiable" reason such as would permit the reinstatement of an oil and gas lease terminated for failure to timely pay the advance rental.

APPEARANCES: Anthony Theophilus, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Anthony Theophilus appeals from a decision of the Montana State Office, Bureau of Land Management, dated April 11, 1975, denying reinstatement of oil and gas lease M 27897-D, terminated by operation of law for failure to pay the annual advance rental on or prior to the anniversary date of the lease as required by 30 U.S.C. § 188(b) (1970).

The anniversary date of lease M 27897-D was April 1, 1975. Appellant's payment was not received until April 3, 1975. Appellant's lease therefore terminated by operation of law when timely payment was not received on April 1, 1975. Upon receipt of the notice of termination appellant duly filed a petition for reinstatement of his lease. On April 11, the State Office rejected his petition, from which decision appellant has taken this appeal.

[1] His statement of reasons is a reiteration and elaboration of the grounds stated in his original petition for reinstatement. Appellant basically admits that the payment was not mailed in sufficient

time for it to be received in Billings, Montana, on April 1, 1975 (the envelope was postmarked in Elizabeth, New Jersey, on the afternoon of March 31) but contends that the delay had been occasioned by his inability to pay the rent pending receipt of his tax refund. In Louis Samuel, 8 IBLA 268 (1972), this Board discussed the meaning of the "justifiable" standard as it related to the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188(c) (1970). Therein we expressly held that "[w]hat is clearly not covered are cases of forgetfulness, simple inadvertence or ignorance of the regulations, or as in the instant case, inability to pay." Id. at 274 (emphasis in original).

The Samuel case is directly on point. Inability to pay the rental is not a "justifiable" reason under the provisions of the Act of May 12, 1970, supra. The State Office correctly refused to grant reinstatement of appellant's lease.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Joseph W. Goss
Administrative Judge

